IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY APPLICATION NO.1138 OF 2006
IN
COMPANY PETITION NO.37 OF 2006

Bimal Kumar Sarkar ..Applicant.
Vs.
M/s. Agni Electrodes Pvt. Ltd. ..Respondent.
....
Mr. Chaturvedi i/b Chaturvedi & Associates for the Applicant.
Mr. M.N. Bhadrashetye for the Respondent.
....

CORAM: **DR. D.Y. CHANDRACHUD, J.**

13th April, 2007.

P.C. :

1. The Company Application is for the appointment of a provisional liquidator. By an order dated 30th November, 2006 North Kanara G.S.B. Co-op. Bank Limited was permitted to be added as a party to the proceedings since the bank has taken possession under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. The application for the appointment of a provisional liquidator has been opposed by the bank. The bank has filed an affidavit of Ms. Mohini Kamath, Legal Officer. The affidavit reveals that the company had executed a deed of hypothecation of its book debts and stocks in favour of the bank. Apart from that, there was a hypothecation of the machinery and an equitable mortgage by depositing of title deeds of the plot of land (Survey No.36/1 of Village Lohop, Tal. Khalapur, Dist. Raigad) together with the structures standing thereon by a deed dated 22nd October, 1999. The charge has been registered with the Registrar of Companies. On 16th September, 2004 the bank issued a securitization notice under section 13(2) of the Act. A formal possession was taken over by the bank on 10th November, 2005. Eventually an order was passed by the District Magistrate under Section 14 on 6th November, 2006. In so far as the Applicant is concerned, his claim is to the extent of Rs.1.74 lacs as an unsecured creditor for goods sold, supplied and delivered. The company is alleged to have issued a confirmation on 4th August,

2005 which was followed by a statutory notice dated 8th November, 2005. The Petition for winding up was instituted on 8th June, 2006 and upon the order of admission being passed was advertised on 21st July, 2006. At this stage, since the bank has already taken recourse to its remedies under the Securitization Act by taking over the land, plant, machinery and the structure, no case has been made out for the appointment of a provisional liquidator. Counsel appearing for the bank has, however, stated before the Court that the bank would be willing to give inspection to the Applicant of the underlying documents on the basis of which the security interest is claimed by the bank. The bank also states that it will be ready and willing to furnish inspection of the site to the Applicant. The statements are accepted. The Application is dismissed.